

Application No. 10/612,517

b. Remarks

Claims 1-15, as amended, are pending in the application. Claim 16-20 have been withdrawn as being directed to a nonelected invention. Claims 1-15 stand rejected. The claims have been amended.

1. Earlier Election/Restriction Requirement

According to the September 12, 2006 Office action, Claims 1-15 are pending in the application, Claims 16-20 have been withdrawn as being directed to a nonelected invention, and the species requirement has been withdrawn (thank you). The nonelected claims are being held in abeyance until final disposition of the elected claims.

2. Rejection under §112, second paragraph

Claim 3 stands rejected under 35 USC §112, second paragraph. Claim 3, line 2, has been amended to clarify the ratio as essential oil and water: petrolcum jelly. It is believed that the claims particularly point out and distinctly claim the subject matter. No new matter has been introduced by this amendment.

3. Rejection under §102(b)

Claims 1, 3, and 6 stand rejected under 35 USC §102(b) as being anticipated by Lachampt et al. According to the Office action, Example 4 of Lachampt et al. includes 4% almond oil. Even though a cuticle cream (see column 6, line 41) is not a hair treatment composition, in the interest of gaining an auspicious allowance, Claim 1 has been amended to state that the essential oil is not almond oil. Antecedent basis is found in lines 4-5 on page 4 of Applicant's specification.

Claim 3 has been amended as stated above. Claim 6 has been amended to state that the composition comprises aloe vera gel, per Applicant's page 5, third paragraph. Amended Claims 1, 3, and 6 are believed to be patentably distinguishable over Lachampt et al. No new matter has been introduced by this amendment.

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4. Rejection under §103(a)

Claims 1-15 stand rejected under 35 USC §103(a) based on a combination of references.

a. First Argument

It is submitted that the cited art, DE '982, Muller, Schultz, Flender, and the other applied patents and published applications relating to pharmaceutical preparations, is nonanalogous and would not have presented itself to an inventor's attention in solving the present problem (see MPEP 2141.01a). The test for obviousness is what the combined teachings of the references would have suggested to one of ordinary skill in the art. Primary reference DE '982 would not have been reasonably pertinent to the problem with which the inventor was concerned because a person of ordinary skill in the art would not have expected to develop a hair treatment composition particularly for African-Americans, by considering a pharmaceutical reference for a neurodermatitis, psoriasis, and eczema ointment. Two of the three DE '982 active ingredient components, liposomes and vitamins (listed in the DE '982 title), are not even claimed by Applicant. Those references are not within the field of Applicant's endeavor, and are not reasonably pertinent to the particular problem with which the inventor was concerned (see MPEP 2141.01a).

b. Second Argument

Muller is cited in the §103 rejections on pages 4-9 of the Office action. Muller teaches combining phospholipids with sterols, such as cholesterol, to make his liposome preparations (col. 2 at bottom; first example). If a person skilled in the art would have combined the teachings of DE '982 and Muller as suggested on page 5 of the action, cholesterol or another sterol would apparently have to be present to make the liposome preparation. Applicant's claimed compositions do not include sterols...or liposomes (microscopic vesicles). It is respectfully submitted that no prima facie case of obviousness has been made.

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c. Third Argument

According to MPEP 2143.01, the prior art must suggest the desirability of the combination of references. There is no suggestion or motivation provided in DE '982, or Muller, to have made the modifications suggested by the Examiner. There is no suggestion or motivation in DE '982 or Muller to combine reference teachings or to modify the reference to arrive at a hair treatment composition. There is no suggestion or motivation provided to have omitted the majority of the DE '982 ingredients (Vitamins A & E, Panthenol, etc.), selected liposome, chosen a liposome precursor instead, and then not to have included the sterol component taught by Muller.

d. Fourth Argument

DE '982 and Muller and the other patents relating to creams /ointments do not teach or suggest water at the levels/ratios taught by Applicant.

e. Fifth Argument

In regard to the §103 rejection of Claims 4, 6, 11, and 12 (pages 6-8 of the action), the secondary reference Grollier expressly teaches a composition with a dermatological active agent, oily compound, and an oil-soluble surfactant. According to col. 1, lines 47-52, active agents that may not be soluble in water or are unstable in water may be soluble in oils or a mixture of oil and surfactant. Grollier's compositions are said to facilitate application and removal (col. 1, lines 52-57). Applicant submits that it would not have been obvious for a person of ordinary skill in the art to have selected an oily compound but not the oil-soluble surfactant from Grollier, and that Grollier in fact teaches against exclusion of the surfactant.

According to amended Claim 4, Applicant's compositions do not include a surfactant. Antecedent basis is found on page 5, last line, of Applicant's specification. Claims 11 and 12 depend directly or indirectly on amended Claim 4. Claim 6 is amended as described above. Also, almond oil has been excluded in amended Claim 1 (see above).

f. Sixth Argument

Turning to pages 10-12 of the action, Jones teaches a cream with oil of burdock root, and Flender teaches a psoriasis ointment containing cholesterol. In regard to Claims

1-3 and 6, and Claims 4, 14, and 15, a person skilled in the art combining Jones and Flender would have ended up with a cream/ointment. Barring hindsight, there would have been no motivation to have selected only the allusion to water in col. 3, lines 25-36 and omitted the cholesterol, which is the essential ingredient of Flender's ointment, or Jones' oil of burdock root. Applicant submits that lines 25-36 refer to adding a small amount of distilled water while mixing under elevated temperatures to achieve a two phase mixture. The mixture is then cooled to ambient temperature while agitating. It is respectfully submitted that the combination of Jones in view of Flender does not make a prima facie case of obviousness.

Amended Claim 14 and Claim 15 depend directly or indirectly on amended Claim 4. Also, amended Claim 15 now states "virgin" olive oil, per Applicant's specification.

In col. 2, first paragraph, Jones distinguishes the heavy mineral oil she uses from light mineral oil, which she states is extracted earlier in the process, and petroleum jelly, which she says is extracted later in the process. Applicant submits that Jones thus teaches against a conclusion that petroleum jelly and Jones' heavy mineral oil are interchangeable. This element (petroleum jelly) is not fairly found or taught by Jones even in view of Flender or Peffly.

Jones is alternatively combined with Peffly et al. in regard to Claims 1-3 and 6, and Claims 4, 14, and 15 (pages 10-12 of Office action). Peffly et al. teach silicone polymer-containing formulas containing water and surfactant for dispersal. A person skilled in the art, who would have known how difficult it is to reformulate, would not have been motivated to add water to Jones' cream without including the surfactant for dispersing the ingredients. Applicant's composition does not require surfactant, per amended Claim 4. Applicant's composition does not comprise surfactant or silicone, per amended Claim 2. Antecedent basis is found in the last paragraph on page 5 of Applicant's specification. Claims 14 and 15 depend directly or indirectly on Claim 4. Claim 6 has been amended as stated above.

Hyldgaard et al. teach an emulsion for sun protection, combating skin parasites, etc. (see third paragraph, col. 1) that includes a surfactant for stability and cleansing. This would have provided further motivation for the skilled person to include surfactant in the formula.

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Although Applicant respectfully disagrees with the rejections, Applicant seeks to gain an auspicious allowance and has therefore voluntarily amended the claims. No new matter has been added by these amendments. Applicant would be pleased to supply additional information in support of this application, or to discuss over the telephone any additional amendments the Examiner considers necessary to place the application in condition for allowance. Applicant requests that these amendments be made of record in the case and considered by the United States Patent and Trademark Office Examiner, and that the claims as amended be allowed.

Respectfully submitted,
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